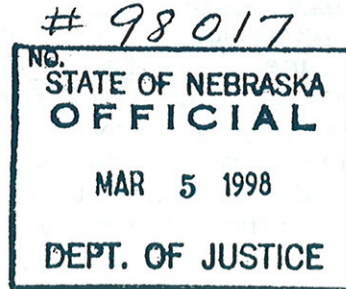


STATE OF NEBRASKA  
Office of the Attorney General

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
CAPITOL FAX (402) 471-3297  
1235 K ST. FAX (402) 471-4725

DON STENBERG  
ATTORNEY GENERAL

STEVE GRASZ  
LAURIE SMITH CAMP  
DEPUTY ATTORNEYS GENERAL



DATE: March 4, 1998

SUBJECT: Authority of the Nebraska Corn Board to Grant Refunds of Corn Checkoff Fees

REQUESTED BY: Nebraska Corn Board

WRITTEN BY: Don Stenberg, Attorney General  
Steve Grasz, Deputy Attorney General

Pursuant to the Nebraska Corn Resources Act, a fee is levied on all corn sold through commercial channels or delivered in Nebraska. Neb. Rev. Stat. Ann. § 2-3623 (Mich. 1997 Supp.). This excise tax or "checkoff" fee is also paid when a loan is made to producers under federal programs where the corn is pledged as security for the loan. Neb. Rev. Stat. Ann. § 2-2628 (Michie 1997 Supp.).

You have requested an Attorney General's Opinion as to the authority of the Nebraska Corn Board (hereinafter the "Board") with respect to the granting of certain refunds of checkoff fees to corn producers. Specifically, you have asked "what authority does the Nebraska Corn Board have in granting a refund to producers who purchase their loan corn back to feed their livestock after the thirty day deadline as described in the Corn Resource Act?"

The Nebraska Corn Resources Act provides, in pertinent part:

In the case of a pledge or mortgage of corn as security for a loan under the federal price support program or other government agricultural loan programs, the fee shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the

David K. Arterburn  
L. Jay Bartel  
J. Kirk Brown  
David T. Bydalek  
Dale A. Comer  
Suzanna Glover-Ettrich  
Royce N. Harper  
Lauren L. Hill

Jay C. Hinsley  
Amy Hollenbeck  
William L. Howland  
Marilyn B. Hutchinson  
Kimberly A. Klein  
Jennifer S. Lilledahl  
Joseph P. Loudon

Charles E. Lowe  
Lisa D. Martin-Price  
Lynn A. Melson  
Donald J. B. Miller  
Ronald D. Moravec  
Fredrick F. Neid  
Marie C. Pawol

Paul N. Potadle  
Mark D. Raffety  
Carla Heathershaw Risko  
Robert B. Rupe  
James D. Smith  
James H. Spears  
Mark D. Starr

Martin Swanson  
David R. Tarvin, Jr.  
Timothy J. Texel  
John R. Thompson  
Barry Waide  
Terri M. Weeks  
Melanie J. Whittamore-Mantzios  
Linda L. Willard

loan plus thirty days after the collection of a fee for corn that is mortgaged as security for a loan under the federal price support program or other government agricultural loan programs, the grower decides to purchase the corn and use it as feed, the grower shall be entitled to a refund of the checkoff fee previously paid. The refund shall be payable by the board upon the grower's written application to the board for a refund of the amount deducted. Each application for a refund by a grower shall have attached thereto proof of the tax deducted.

Neb. Rev. Stat. Ann. § 2-3628 (Mich. Supp. 1997) (emphasis added).

The wording of the above quoted statutory deadline for checkoff refunds is relatively new. Prior to July 19, 1996, the statute provided that such a refund was available only within six months of the time the loan was made. *See* LB 1336 (Neb. Laws 1996). The legislative history of this provision shows that the current language was intended to "extend[] the period of time under which a producer may request a refund of previously deducted fees for certain corn which he or she decides to use as feed rather than sell." Committee Records on LB 1336, 94th Neb. Leg., 2nd Sess. (1996). The former statute authorized refunds only for six months after the loan was made. At the committee hearing on LB 1336, Senator Klein explained the purpose of the change and compared the old and new language. However, nothing in the legislative history indicates any intent to authorize refunds beyond the "life of the loan plus thirty days." Committee Records on LB 1336, 94th Neb. Leg., 2nd Sess., 42 (January 30, 1996).

It is quite clear from a plain reading of the statute that the Board has authority to grant refunds to producers within the life of the loan plus thirty days. Although the statute does not reference refunds after that time, it is a general principle of statutory interpretation that mention of one thing implies exclusion of another. "Stated another way, an affirmative description of cases in which certain powers may be exercised implies a negative on exercise of such powers in other cases." Op. Att'y Gen. No. 95067 (Aug. 28, 1995). *See State Board of Agriculture v. State Racing Comm.*, 239 Neb. 762, 478 N.W.2d 270 (1992). It is also a basic rule of law that a state agency has no power or authority other than that specifically conferred by statute or by construction necessary to accomplish the plain purpose of the statute. *See In re Application A-16642*, 236 Neb. 671, 463 N.W.2d 591 (1990); Op. Att'y Gen. No. 95067.

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In the present case, the Legislature has expressly authorized the Board to grant refunds to producers within the life of a loan plus thirty days (provided other conditions of the statute are met). In so doing, the Legislature limited the authority of the Board with respect to the payment of refunds. Consequently, the Board has no authority to grant refunds to producers after the statutory deadline.

Sincerely,

DON STENBERG  
Attorney General

  
Steve Grasz  
Deputy Attorney General

Approved By:



Attorney General

3-3245-3

